Ministère de la Justice Canada
Department of Justice Canada

Research Report

Summary of the Inuit Women and the Nunavut Justice System Workshop

2000-9e

Department of Justice Canada

December 2, 1999

Division de la recherche et de la statistique/ Research and Statistics Division

Secteur des politiques/ Policy Sector

Canada

Research Report
Summary of the Inuit Women and the Nunavut Justice System Workshop
2000-9e

Department of Justice Canada

December 2, 1999

The views expressed herein are solely those of the author and do not necessarily represent the views of the Department of Justice Canada.

TABLE OF CONTENTS

Objectives of the Workshop 1

1.0 Overview of the Report 1

2.0 Overview of the Administration of Justice in Nunavut 3

3.0 Remaining Challenges of the Nunavut Justice System 5

4.0 Policy and Program Implications 9

5.0 Conclusions 11

List of Appendices

APPENDIX 1 12
Inuit Women and the Nunavut Justice System Workshop – Agenda

APPENDIX 2 14
List of Workshop Participants

OBJECTIVES OF THE WORKSHOP

1. To present the research report "*From Hips to Hope: Inuit Women and the Nunavut Justice System*" prepared by Mary Crnkovich and Lisa Addario with Linda Archibald; a paper on Inuit women and the evolving justice system in Nunavut.

2. To facilitate a discussion on the policy implications of the paper as they relate to federal project funding in the area of justice in Nunavut (i.e., participation of women; training; evaluation and monitoring)

1.0 OVERVIEW OF THE REPORT

This report focuses on three specific components of the criminal justice system in Nunavut—the unified court structure, justices of the peace and community-based justice committees. It presents a snapshot of complex and multi-layered issues in relation to these three components of the justice system and their impact on Inuit women. Real and potential reforms are examined along with their respective strengths and challenges. Other components of the justice system, including policing, corrections and civil law, while important, have not been addressed and the discussion on family law is brief.

Mary Crnkovich noted that both the issues addressed and the analysis used in the report were based on the specific documents and reports provided by the Department of Justice as well as the researchers' experience working with Inuit women on justice issues. The documents and reports relied upon are listed in Appendix 1 of the report and excerpts of them are presented in Appendix 2. The Appendix 2 excerpts identify or refer to the specific issues or concerns associated with Inuit women and the three components of the Nunavut administration of justice examined in the report.

2.0 OVERVIEW OF THE ADMINISTRATION OF JUSTICE IN NUNAVUT

Mary summarized three of the main components of the Nunavut Justice System--the unified court, justices of the peace, and community-based justice. Included in the review were the changes that had taken place as a result of amendments ***to Bill C-57 - An Act to Amend the Nunavut Act***, and a discussion of the previous structure in the Northwest Territories prior to the creation of Nunavut. While the justice system has evolved since the creation of Nunavut (and is still evolving), many initiatives were underway prior to division of the NWT. In particular, community-based justice programs have been underway since the early 1990s.

In summary, parts of the justice system operating in the Nunavut Territory prior to April 1, 1999 have been adopted while other parts of the system have been discarded. ***Bill C-57*** was passed on March 11, 1999. These amendments dealt almost exclusively with changes required to the ***Nunavut Act*** that would accommodate the newly proposed court structure for Nunavut—a single-level trial court system. In regards to other components of the administration of justice, such as community-based justice and the role of the justices of the peace, what is being changed and what remains the same is not so clear.

At this point in time, the administration of justice in Nunavut could best be described as a "work in progress." A detailed description of the unified court, justices of the peace and community justice committees is contained in the paper, ***From Hips to Hope: Inuit Women and the Nunavut Justice System***.

A justice conference held by the Nunavut Social Development Council (NSDC) in Ranking Inlet, NT from September 1 to 3, 1998 and the resulting report and recommendations is assumed in the report to have a major impact on the direction of and approach taken by the Nunavut Government to reforming the justice system.

Accordingly, it is assumed the two components discussed in this report and not addressed explicitly in Bill C-57—justices of the peace (JPs) and community-based justice initiatives—may also be reformed to reflect the recommendations made at the Nunavut Social Development Council's (NSDC) justice conference. While the NSDC has no decision-making authority, many Inuit participating in this conference are influential leaders as elected members of the Nunavut Legislative Assembly

Lisa Addario introduced the NSDC recommendations by first summarizing the core values that underlie the specific initiatives:

Core Values

- Inuit culture and traditions are integral to decision-making and should therefore form an integral part of the decision making work of JPs and the work of the CJC.
- Inuit have knowledge and the desire to run a justice system that is effective, and therefore, brings peace.
- Increased Inuit responsibility requires encouraging people to take on more responsibility for the justice system than they currently have.
- Incorporate Inuit women and women's concerns.

- All levels of the court should consult with the community: in minor matters consultations should involve the family; in major matters, the community. The goal is "making things right." Similarly, all levels of courts including appellate courts should receive input from the community.

Alternatives to Jails

- Elders have historically played an important role; their influence should be encouraged and mechanisms should be developed to incorporate elders' knowledge.
- Alternatives to jail, such On-the-land programs (traditional skill development), must be expanded to permit the court a wider array of sentencing tools.

Justices of the Peace

- Take on more serious cases, i.e. domestic violence and repeat offenders.
- JPs need more community support to enable them to do work together (i.e. set up JP panels).
- JP court less formal.
- Negotiate with JPs employers to give paid leave to do their work.
- JPs and community justice committees be involved in referrals (decision-making expanded beyond RCMP and Crown). (Issue: screening should not compromise victim's privacy.)

Community Healing

- "Admitting to doing wrong" is key to allowing healing to begin: issues must be dealt with quickly. Conversely, hiding guilt is thought to create sickness in an individual which could, in turn, spread to the community.
- Healing and counselling on a large scale within the community must take place if crime, family violence, alcohol or drug abuse are to be addressed.
- Priority: meeting the healing needs of youth (train and pay Inuit healers).
- Inuit in the community with the capacity to heal using traditional skills and values must be recognized and compensated.

Community Justice

- Community justice committees to deal with serious matters, including family violence.
- Capability of Committees increased, including their role, capacity building, training and support.
- The Committees can teach young people traditional skills and values.
- The community requires a better understanding of the work of the Committees.

3.0 REMAINING CHALLENGES OF THE NUNAVUT JUSTICE SYSTEM

Assuming governance of the justice system relates to more than simply locating the dispensers of justice within the community; it is desirable for reforms to be based on traditional knowledge of the Inuit. Much remains to be accomplished before this can be realized. The report identifies challenges that remain to be addressed in the three areas— the unified court structure, JPs and the community-based justice. Rather than review the challenges in the workshop, the facilitators presented five themes common among the challenges and the impact of the interrelationship of these themes.

The five themes are:

a) Accountability;
b) Representativeness;
c) Cultural Sensitivity;
d) Gender Sensitivity; and
e) Community Preparedness.

a) Accountability

This theme refers to impact the remaining challenges have on the accountability of the judiciary, JPs and community justice committees to the community they serve.

Issues:

- Issues for the court structure
    - Already recognized that the court structure has mechanisms built into it to ensure accountability such as an appeals system, a level or standard to which judges must perform, record of the decisions and a complaints/redress process
    - These existing mechanisms must be well understood by the public
    - Record of the decisions of the judges must be readily accessible
- Issues for JPs
    - JPs decisions may be reviewable but conduct review is not so clear, what is the complaints/redress mechanism
    - Lack of training (knowledge and skills, both legal and related to dynamics of family violence);
    - No uniformity in the training, knowledge-base of those performing role of JP; no standards in place;
    - Roles: clarity, re: community perceptions of the role and JPs' authority;
    - As a result of the R.v.Camsell decision (N.W.T.C.A.) JPs held to a lower level of legal, evidentiary standards for certain cases than legally-trained judges– this impacts on issues of accountability – credibility issues of JPs for the community
    - Community pressure on JPs who are also members of the community - being accountable to one's community for Inuit may mean respecting cultural practices and norms such as not "judging" one another – the role of JP is contrary to this
- Issues for community justice committees:
    - Same issues that were identified for JPs apply for committees

- In seeking diverse community membership with wide range of experience limits ability to standardize selection or membership criteria
- Training not readily accessible (knowledge and skills, both legal and related to dynamics of family violence);
- Roles: clarity, re: community perceptions, authority;
- Appeals mechanism (complaints, redress);
- Community pressure on committee members.

b) Representativeness

This theme addresses the issue of ensuring representativeness of Inuit women in the design and implementation of the administration of justice. Currently, all of the judges serving on the two courts of Nunavut are non-Inuit and most live outside of Nunavut.

Issues:

- The current system is two-tiered system wherein the judiciary are non-Inuit and JPs and CJCs are Inuit or community-based due to the requirements to hold position as judge. This has the potential to limit Inuit influence where the decision makers are non-Inuit, and underscores the need for consultation with the community prior to sentence as well as judicial selection criteria that seek to ensure that candidates are knowledgeable about traditional values. There is also a need to examine alternative programs, like the one in Labrador that allowed for the appointment of Judge James Igloliorte, the first provincially appointed Inuk judge in Newfoundland and Labrador. First appointed as a magistrate in 1980, Judge Igloliorte obtained his law degree in 1985. He is the first and only Inuk judge in Canada
- Definition of "community:" issue of who defines community and how to ensure representation of parts of the community without a strong voice, including women and youth.
- Women's participation does not necessarily ensure that a woman's "voice" will become part of the decision making process.
- NSDC recommendation that women deal with women's matters.
- JP training should be open to Inuit who speak only Inuktitut.

c) Cultural Sensitivity

This theme addresses the aspect of cultural sensitivity that remains throughout all of the challenges identified.

Issues of the Court structure:

- The existing court structure and administration of justice is rooted in Euro-Canadian culture, the system is punitive in nature and both of these fundamental aspects of the system are contrary to Inuit culture
- Since the judiciary itself is non-Inuit and most of the deputy judges and appellate judges are not northerners, it is difficult for them to interpret the culture or making it more culturally appropriate
- There tensions between making the system more culturally appropriate and respecting Inuit traditional values associated with "not passing judgement."
- Most obvious issues of cultural sensitivity noted by Inuit women deal with judges' cultural misunderstandings at sentencing stages (mitigating factors that are based on cultural

misunderstandings—i.e. non-Inuit interpretations of Inuit culture and traditions (most evident in sexual assault cases).

Issues for JPs and Community-based Justice

- Points raised with respect to the court-structure apply to these two components as well for those involved in community-based justice committees or act as JPs and are not Inuit or long-term residents
- While community-based justice committees and programs are rooted in the community it does not necessarily mean it is cultural appropriate – or reflective of Inuit culture
- Localizing the administration of justice to the community-level makes may make it more sensitive than the existing court structure, but have to be mindful in making something more "cultural sensitive" may cause other problems so this must be done in an open and visible way for all members of the community to participate (including women)

d) Gender Sensitivity

This theme focused on gender and the impact of cultural sensitivity reforms on gender. Gender bias among members of the judiciary has been extensively documented

Issues:

- Intersection of culture and gender;
- Judicial bias related to intersection of culture and gender, and perceptions of culture resulting in sexual stereotyping about proper roles for women; these stereotypes have influenced judicial sentencing practices.
- Role of elders and views on violence against women;
- community justice committees are seen to be more supportive of the accused, than the victim and the Committees are viewed as a tactic which the defense bar uses.
    - Need for training in dynamics of male violence against women and children, particularly with respect to sexual assault, child sexual abuse and wife battering (judiciary, JPs and justice committees)
    - Perception in the community that JPs take over less serious crime, therefore a problem of violence against women offences falling to the JPs.
    - The feeling is that the courts does not effectively deter sexual assault, and doesn't accurately convey the message that the community values women and that violence against women won't be tolerated.

e) Community Preparedness

This theme deals with the willingness of the community to take on the responsibilities of administering justice at the local level through committees and other alternatives. It also deals with the issues such as communities' capacities to take on these responsibilities in the short and long term; and the financial and human resources and training opportunities available or accessible to assist in this work.

Issues:

- Judicial selection must adequately screen for cultural stereotypes. Judges need to take better account of Inuit values;

- Capacity issues, such as the existence and level of services, coordination of services and availability of resources plus the need to examine community values, views on violence against women, the Charter and human rights issues (knowledge + skill development + awareness of dynamics of male violence against women and children);
- Incorporating the above into training for JPs to ensure training on substantive law matters;
- Need to ensure that participation by the victim is voluntary;
- Health and well being of committee members is needed before they can do their work
  - Standards required for dispensing community justice;
  - Monitoring and evaluation (need for mechanism for ongoing monitoring and formal evaluation process); and
  - Need for public education to support the role of JPs and justice committees (public education to include the role and mandate of JPs and committees as well as awareness of laws regarding crimes of violence against women and children).

Inter-relationships of the Five Themes

The facilitators ended their discussion on the themes by discussing the significance of taking into account the interrelationship of the themes when attempting to respond to the challenges identified.

The increased role of JPs and community justice committees in the administration of justice is seen as making the system more culturally appropriate. Given the issues raised above, there is a need to understand that not taking account of the inter-relationship of these issues can result in progress in one area creating problems in another.

Three examples were reviewed to highlight the interrelationships. The first example dealt with the judiciary's attempts to be more sensitive to Inuit culture and to turn to elders for advice. These attempts to make the court system more "culturally sensitive" may have a negative impact on women and child victims of family violence were the elders involved blame women for the violence they sustain.

Similarly, the increased role for community justice committees must be analyzed in the context of the resources available in the community, training opportunities, levels of public awareness and attitudes towards violence against women and children, and the issues raised under the representativeness section. Evaluation and monitoring will be important tools for tracking progress; yet, they must be designed so as not to focus on discrete components of the system without also taking account of the interrelationships discussed here.

Finally, reforms enabled Inuit who speak only Inuktitut to participate in jury trials. This reform is seen as culturally appropriate. However, it also clashes with the traditional Inuit reluctance to judge one another. As a consequence, only rarely have sexual assault trials resulted in convictions in the last two decades. The dissatisfaction among Inuit women with this unwillingness to convict has culminated in a Pauktuutit resolution that there be no jury trials in communities in cases of sexual assault. This response is understandable but potentially contravene an offender's right to have Inuit available for jury duty.

4.0 Policy and Program Implications

Following the presentation by the facilitators, the participants met in small groups to discuss the following scenario in light of the challenges discussed in the report and the themes outlined above:

> An Inuk woman living in a small community was attending a meeting in another community. After being away from home for a few days, she began to discuss with her roommate and a few other women who were not related to her or from the same community, the problems she was facing at home. Following is a summary of her life and circumstances at that particular point in time.
>
> The woman has been married for twenty-five years and has grown children. She moved from her home community to her husband's when they married. Her sister also lives in this community but this is her only relative there. Her husband is from a large, prominent family and his numerous relatives live and work throughout the community.
>
> The husband works outside of the home and is considered a good provider. The wife has worked outside jobs from time to time but her main work has been within the home, both caring for her family and sewing for cash income. She now babysits one of her grandchildren.
>
> The husband has beaten his wife throughout their twenty-five year marriage. The beatings tend to be more frequent and severe when he is drinking. The wife has learned that if she drinks when he does, the physical effects of the beatings are not felt until the next day. He also ridicules her in front of his friends and family, ignores her, and generally abuses her emotionally and verbally. This latter behaviour is not associated with drinking but is an everyday event.
>
> Early in the marriage, she spoke to her sister about the abuse but was told she must have done something to deserve it. After many years, her overall impression is that the community views her husband as a good man; if she is beaten, then she is to blame. (This impression is intensified by the fact that she now drinks when he does—in a small community, people know who drinks and who does not.) Moreover, there are strong community values, which reinforce the importance of family ties and of a family staying together. The woman has considered speaking with a nurse or counsellor, but confidentiality has proven to be a problem in small communities and she is worried that it will get back to her husband.
>
> While attending an out-of-town meeting, the woman decided not to return to her husband but to travel to a shelter in another community. However, she did, in the end, return home, in part because of her responsibility for babysitting her grandchild.

In considering this situation, participants were reminded that research on violence against women has indicated that women in violence situations can often anticipate an attack and, rather than live with the anxiety of waiting, they will precipitate it or abuse alcohol and/ or drugs to dull the pain. This results in an easy blaming of the victim, both from the an observer's perspective as well as that of the victim. Also, research suggests that a woman is most in danger after she had made a decision to leave a violent relationship and in the year following.

Participants were asked to consider this woman's story in their small group discussions of the policy and program implications for the federal government with respect for judge and jury; JPs; and community justice committees. In doing so, participants were asked to focus on the potential federal role in supporting the Nunavut justice system's ability to address such situations.

In other words, what, if anything, can the federal government do to ensure that the issues raised in the scenario would be adequately addressed if this women's situation was referred to any of the three elements of the justice system under discussion—Judge and Jury; JP; community justice committee?

Group 1 Response: Judge and Jury

Group 1 examined the question in terms of research that could be undertaken at the federal level:

1. Research examining the experience of victims and accused, post-trial: for example, considering the implications of conviction and no conviction; Judge vs. Judge and Jury.
2. Issues surrounding change of trial venue.
3. Community attitudes regarding family violence and sentencing.
4. Evaluation of judicial training and public education.

Groups 2 Response: Justices of the Peace

1. Ensure privacy and safety of the woman.
2. Ensure safety plan is in place, especially if accused/offender is staying in same community as woman.
3. Training for JPs to increase awareness of dynamics of family violence.
4. Community resources: training for people—counselling skills, etc.
5. Change in attitudes/ behaviour. Need long term plan—changes will not happen in only 1 or 2 generations.

Group 3 Response: Community Justice Committee

1. Work with Nunavut Department of Justice to design and implement training: starting point is diversity. Include Community Justice Specialists in training.
2. Dialogue and consultations are required within the community—discussions must take place in a way that is safe for all community members to express views.
3. Opportunity for the community to air various beliefs, attitudes.
4. Undertake evaluations: use participatory research methods.
5. Develop funding criteria that promote safety.

5.0 CONCLUSIONS

Workshop participants recognized the complexity and interrelationship of the issues associated with the impact of the evolving Nunavut justice system on Inuit women. It was also noted by those participants who attended the NSDC Justice Conference that women actively participated in the proceedings and issues of violence against women were raised and seriously discussed. Yet, in light of what we know about family and community dynamics, formal processes and mechanisms may have to be in place to allow the same women to speak out freely and safely in their home communities. There is a role for the federal government in supporting this.

Echoing the points raised in the report, ***From Hips to Hope: Inuit women and the Nunavut Justice System,*** participants noted in their group presentations that the increased role and responsibility of community justice committees and JPs provides an opportunity for Justice Canada, as a funder of training programs and research, to work with the Nunavut government to begin to explore short and long terms responses to the challenges identified in the report.

APPENDIX 1

INUIT WOMEN AND THE NUNAVUT JUSTICE SYSTEM WORKSHOP – AGENDA

INUIT WOMEN AND THE NUNAVUT JUSTICE SYSTEM WORKSHOP

December 2, 1999
Department of Justice
Ottawa

Agenda

1. Introductions

2. Overview of the Report

3. Overview of the Administration of Justice in Nunavut

a) Unified Court
b) Justices of the Peace
c) Community-based Justice
d) NSDC Recommendations

4. Remaining Challenges of the Nunavut Justice System

a) Accountability
b) Representativeness
c) Cultural Sensitivity
d) Gender Sensitivity
e) Preparedness
f) Inter-relationships of a) - e) above

5. Open Discussion on Policy and Program Implications

a) Meaningful Participation
b) Evaluation and Monitoring
c) Training
d) Public Education in Targeted Areas

APPENDIX 2

LIST OF WORKSHOP PARTICIPANTS

Workshop Participants

Sheila Arthurs, Northern Issues
Deborah Auger, Northern Issues
Ed Boucher, RCMP
John Clement, Research & Statistics
Shirley Cuillierier, RCMP
Ab Currie, Research & Statistics
Robert Depew, Aboriginal Community Justice
Kimberly Fever, Aboriginal Corrections, Solicitor General
Naomi Giff, Aboriginal Justice Strategy
Monique Godin-Beers, National Parole Board
Barbara Grocholski-Stewart, Child Support Team
Tina Hattem, Research & Statistics
Suzing Hum, Gender Equality & Diversity
Catherine Kane, Criminal Law Policy
Lois Leslie, Government of Nunavut
Chantal Marion, Northern Issues
Catherine McBride, Aboriginal Justice Strategy
Clare McNab, Women Offender Sector, CSC
Darrell Phillips, Aboriginal Issues, CSC
Mireille Provost, Programs
Jocelyn Sigouin, Gender Equality & Diversity
Hilda Vanneste, Women Offender Sector, CSC
Marie-Claire Wallace, Communications
Norma Won, Gender Equality

Facilitators: Lisa Addario,
Linda Archibald, Mary Crnkovich: *Archibald & Crnkovich*